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# DETECTING, DETERRING AND PUNISHING THE USE OF FRAUDULENT ACADEMIC CREDENTIALS: A PLAY IN TWO ACTS

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There is seldom anything of genuine value created by man that sooner or later is not found in counterfeit form.<sup>1</sup>

## I. INTRODUCTION

It is precisely because of their inherent value that academic credentials are subject to falsification, forgery, alteration and other fraudulent use. In a technical sense, academic credentials are "objective indices of merit;"<sup>2</sup> as a practical matter, they also serve as "passports."<sup>3</sup> In this "society of credentials," academic credentials are often the measure of one's status.<sup>4</sup> In other words " . . . [e]ducational credentials are used to label people according to educational accomplishment, thus dramatically affecting how far the door of opportunity opens, if it opens at all. Not only do educational credentials affect the image other people hold of a person, but they also affect that person's self-image."<sup>5</sup> Academic creden-

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\* © 1990 by Joan E. Van Tol. Joan E. Van Tol, Assistant Professor of Law, West Virginia University College of Law; B.A. West Virginia University, 1977; J.D. West Virginia University, 1980. Portions of this article were presented at the Stetson Conference on Higher Education Law in January of 1987. The author gratefully acknowledges the research assistance provided by Daniel Cooper, a third year student at West Virginia University College of Law.

1. John, *Counterfeit Degrees*, 23 SCHOOL LIFE 245-46 (Mar. 1958) (quoted in L. PORTER, *DEGREES FOR SALE* 88 (1972)).

2. Harris & Trout, *Educational Credentials: Past, Present, and Future*, CREDENTIALING EDUCATIONAL ACCOMPLISHMENT 40 (J. Miller & O. Mills ed. 1978).

3. *Id.* at 42.

4. "[C]redentialing is critical in a society dominated by material rather than spiritual values and by optimal productivity rather than social stability." *Id.* at 28.

5. Miller, *Preface*, CREDENTIALING EDUCATIONAL ACCOMPLISHMENT xi (J. Miller & O. Mills ed. 1978). See also Smart & Pascarella, *Self-Concept Development and Educational Degree Attainment*, 15 HIGHER EDUC. 3 (1986); D. STEWART & H. SPILLE, *DIPLOMA MILLS: DEGREES OF FRAUD* 25 (1988) ("[t]he usual target [of

tials clearly play a significant role in employment practices. A recent survey of employers found that more than 90% of the respondents place either a major or moderate emphasis on academic credentials.<sup>6</sup> Educational credentials appear to be most significant in the initial hiring decision; they are much less significant in subsequent promotion or advancement decisions.<sup>7</sup> Finally, there is a strong correlation between economic status and educational attainment.<sup>8</sup>

Credentials serve similar purposes in the academic environment by indicating a student's qualification for advanced study.<sup>9</sup> The incentive to earn or obtain the best possible aca-

diploma mills] is adults who feel stymied, either professionally, or personally by an absence of credentials.").

6. A. Malizio & D. Whitney, *EDUCATIONAL CREDENTIALS IN EMPLOYMENT: A NATIONWIDE SURVEY 2* (May 1985) (a survey conducted by the American Council on Education's Office on Educational Credit and Credentials). This survey reports the responses of a random sample of 1,500 members of the American Society for Personnel Administration.

7. Bills, *Educational Credentials and Promotion: Does Schooling Do More Than Get You in the Door?* 61 SOC. OF EDUC. 52 (1988); see also Arrow, *Higher Education as a Filter*, 2 J. PUB. ECON. 193 (1973); I. BERG, *EDUCATION AND JOBS: THE GREAT TRAINING ROBBERY* (1970); Riley, *Information, Screening and Human Capital*, 66 AM. ECON. REV. 254 (1976); Spence, *Job Market Signalling*, 87 Q. J. ECON. 355 (1973). A recent study and analysis of hiring and promotion decisions concluded that:

educational credentials enhance careers most directly by getting people through organizational gates and onto organizational ladders. If managers who hire from the outside rarely report that schooling is the first criterion they use to screen candidates, about four-fifths consider credentials important to their ultimate hiring decision. Once an employee is inside an organization, this credential is of less direct value in further job assignments and tends to give way to indicators that organizational decision makers can observe directly. Occasionally, the credential is of continuing importance, and some managers reported that their evaluation of the credential in a promotion decision rivaled or even exceeded their evaluation of more direct indicators of the person's job performance. Overall, though, credentials serve primarily to get people in the door.

Bills, *supra*, at 52, 58.

8. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS NO. 11, 1987, *CURRENT POPULATION REPORTS*, (Spring 1984).

9. Of the 1,350 institutions responding to a survey conducted by the American Association of Collegiate Registrars and Admissions Officers and the College Board, 83% reported an overall acceptance rate for undergraduate admission; however, a subset of those respondents with "competitive" admissions policies reported a 56% acceptance rate. *UNDERGRADUATE ADMISSIONS: THE REALITIES OF INSTITUTIONAL POLICIES, PRACTICES AND PROCEDURES* (1980) (a report of a survey conducted by the American Association of Collegiate Registrars and Admissions Officers and the College Board).

Admissions to graduate and professional programs are also quite competi-

demic credentials is so strong that some individuals may resort to fraudulent methods<sup>10</sup> to obtain their academic credentials. Because the use of fraudulent academic credentials diminishes the value and threatens the integrity of legitimate academic credentials, steps must be taken to detect, prevent, and punish their use.

The following analysis sketches the dimensions of the problem and proposes some guidelines for handling cases of fraudulent academic credentials.

## II. FRAUDULENT ACADEMIC CREDENTIALS: THE PROBLEM

An academic credential is typically a degree, certificate, diploma or license which is granted to an individual upon the successful completion of a course of study or examination.<sup>11</sup> The term academic credentials encompasses grade

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tive. For example, the decision profile of the Law School Admission Service for the 1987-88 academic year reveals that sixty-six per cent of the 74,339 persons who applied to at least one American Bar Association (ABA) approved school and who submitted LSAT scores and GPAs to the Law School Admissions Service were admitted to at least one ABA approved school. The competitive nature of law school admissions is further revealed by the fact that during the same period in which 74,339 persons applied for admission to law school, 115,400 tests were administered; thus the test and application procedure also serve as a filter in the admissions process. Telephone interview with William Kennish, Vice President of Operations for the Law School Admission Service (Aug. 30, 1989).

In the 1988-89 academic year, approximately sixty-four percent of the 26,721 applicants to medical school were accepted for admission. Telephone interview with Joseph A. Keyes, Jr., Vice President for Institutional Planning and Development and General Counsel of the Association of American Medical Colleges (Aug. 31, 1989).

10. Fraud is used in this context to mean

[a]n intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

BLACK'S LAW DICTIONARY 594 (5th ed. 1979). See also WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 904 (3d ed. 1971).

The term fraudulent academic credentials is used throughout this article to include not only the use of fraudulent academic credentials but also to include the fraudulent use of legitimate academic credentials.

11. CHAIRMEN OF THE SUBCOMM. ON HEALTH AND LONG-TERM CARE AND THE SUBCOMM. ON HOUSING AND CONSUMER INTERESTS OF THE SELECT COMM. ON AGING, 99TH CONG., 1ST SESS., A REPORT ON FRAUDULENT CREDENTIALS: *glossary*

reports, transcripts and resumes, vitae, and applications as well as other documents on which academic achievements are self-reported. A fraudulent academic credential is a credential which is obtained or used with the intent to deceive or to falsely represent the purported academic achievement.

Although there is no central clearinghouse which collects data on the extent of the use of fraudulent academic credentials, various sources estimate that between twenty and thirty percent of all working persons have embellished their credentials.<sup>12</sup> College and university registrars report that they routinely receive complaints or inquiries seeking verification of academic credentials. These complaints or inquiries typically involve counterfeit diplomas or certificates, altered transcripts, stolen credentials, computer manipulated records, false impersonation of the legitimate credential holder, and claims of status without supporting documentation.<sup>13</sup>

Perhaps the most widely discussed<sup>14</sup> type of fraudulent academic credential is the "brokered credential." Brokered

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(Comm. Pub. No. 99-550 1986) [hereinafter 1985 JOINT REPORT]. Credentials are defined in this report as "testimonials showing that a person is entitled to credit or has a right to exercise official power in terms of degrees, licensing, etc." *Id.* at 118. An "educational credential" is defined as "[a] certificate, diploma or degree document (associate, baccalaureate, or graduate) certifying that the requirements therefor have been met through satisfactory completion of a program of study or other verified educational accomplishment." Miller, *supra* note 5, at xvi (J. Miller & W. O. Mills ed. 1978).

12. 1985 JOINT REPORT, *supra* note 11, at 32. *But cf.* D. STEWART & H. SPILLE, DIPLOMA MILLS: DEGREES OF FRAUD 79 (1988) (in which the authors estimate that approximately 20% of employee credentials contain something untruthful about academic credentials).

13. 1985 JOINT REPORT, *supra* note 11, at 41 (Of the registrars surveyed by the subcommittee, about 85% reported that receive complaints or inquiries from educational institutions or employers about claimed academic credentials).

14. See Stewart, *Protecting the Integrity of Academic Degrees* (Sept. 1982) (A report to the Commission on Educational Credit and Credentials, American Council on Education); D. STEWART & H. SPILLE, *supra* note 12; Spille & Stewart, *The New Breed of Diploma Mills: Numerous, Tough and Aggressive*, EDUC. REC. 16 (Spring 1985); L. PORTER, DEGREES FOR SALE (1972); 1985 JOINT REPORT, *supra* note 11; *Fraudulent Credentials: Joint Hearing Before the Subcomm. on Health and Long-Term Care and the Subcomm. on Housing and Consumer Interests of the Select Comm. on Aging*, 99th Cong., 1st Sess. (1985) [hereinafter 1985 Joint Hearings]; *Fraudulent Credentials: Federal Employees: Hearing Before the Subcomm. on Health and Long-Term Care of the Select Comm. on Aging*, 99th Cong., 2d Sess. (Comm. Pub. No. 99-550 1986) [hereinafter 1986 Hearing]; CHAIRMAN OF THE SUBCOMM. ON HEALTH AND LONG-TERM CARE OF THE SELECT COMMITTEE ON AGING, 99TH CONG., 2D SESS., A REPORT ON FRAUDULENT CREDENTIALS: FEDERAL EMPLOYEES (Comm. Pub. No. 99-551 1986) [hereinafter 1986 JOINT REPORT].

credentials are "fraudulent credentials secured through use of an individual who, for a fee, brings those seeking credentials together with institutions or other parties in possession of the desired credentials."<sup>15</sup> Brokered credentials are usually purchased from diploma mills.<sup>16</sup> Diploma mills produce sev-

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15. 1985 JOINT REPORT, *supra* note 11. A number of cases involving brokered credentials have been successfully prosecuted. For example, in *United States v. Fowler*, 870 F.2d 656 (4th Cir. 1989) (unpublished disposition), multiple defendants were convicted on mail fraud and conspiracy charges for their roles in marketing and selling fraudulent university degrees and transcripts through advertisements placed in magazines and tabloids. The brokered credentials sold by the defendants were awarded from "bogus institutions named after legitimate, accredited colleges." *Id.*

*See also* *Chong v. Sobol*, 540 N.Y.S.2d 382 (App. Div. 1989) (defendant who obtained a fraudulent transcript from the Universidad Del Noreste in Tampico, Mexico in an attempt to gain a medical degree from Cetec University of Medicine in the Dominican Republic was convicted of criminal possession of a forged instrument); *State v. Broadwell*, 104 Ohio App. 37, 136 N.E.2d 72 (1956) (defendant convicted under statute which makes it an offense to offer to sell a diploma falsely representing the holder or receiver to be a graduate of a medical school); & *Alexander v. United States*, 95 F.2d 873 (8th Cir. 1938), *cert. denied*, 305 U.S. 637 (affirming defendants' conviction for mail fraud in connection with the issuance of fraudulent and fictitious medical and chiropractic diplomas from the Eclectic Medical University at Kansas City).

16. A diploma mill is "[a]n institution that sells a diploma or degree to a person upon payment of a fee and does not require demonstration of the achievement of college-level training." 1985 JOINT REPORT, *supra* note 11 (glossary).

Diploma mills have eight common characteristics:

1. the faculties are either untrained or are non-existent;
2. the time and effort required to complete a course of study are grossly inadequate;
3. instruction by correspondence lessons fails to meet even the minimum standards of reputable correspondence courses;
4. students enrolled in diploma mill institutions are often unqualified for any program of higher learning;
5. the catalog descriptions of the institution and the course offerings are often unrealistic;
6. advertisements of course offerings and qualifications are often exaggerated and contain false promises of employment opportunities for graduates;
7. the institution's facilities are often merely a single room or post office box;
8. the officers and faculty of the institution often themselves hold degrees from the same or similar institutions.

R. REID, *AMERICAN DEGREE MILLS* 4-5 (1959).

A former diploma mill operator estimated that "about 50% of his clients were interested in degrees at the baccalaureate level, 30% at the master's level, and 20% wanted a Ph.D." D. STEWART & H. SPILLE, *DIPLOMA MILLS: DEGREES OF FRAUD* 14 (1988). *See also* 1985 JOINT REPORT, *supra* note 11, at 14.

Official looking transcripts can also be purchased from diplomas mills. These businesses sell "made to order" transcripts which can be used to substanti-

eral kinds of brokered credentials which may include:

- (1) official look diplomas: diplomas with authentic looking seals, crests and other visual legends; they often indicate that the issuing institution has state approval or accreditation;
- (2) sound alikes: diplomas issued by schools which sound prestigious or which sound like legitimate well known schools (Cormell instead of Cornell, for example);
- (3) life experience: degrees issued for life experience;
- (4) replacement degrees: degrees which replace degrees which are purported to have been lost or stolen; and
- (5) no strings attached: degrees issued with no questions asked.<sup>17</sup>

It is estimated that there are between one hundred and fifty and five hundred diploma mills in the United States each of which may have granted up to 3,000 degrees.<sup>18</sup> Brokered credentials are available in every field from architecture to zoology; however, the major areas of activity for

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ate other brokered credentials D. Stewart & H. Spille, *DIPLOMA MILLS: DEGREES OF FRAUD* 162 (1988).

In testimony before the Subcommittee, Pedro de Mesones, who prior to his conviction for mail fraud and conspiracy had been "engaged in the business of expediting medical degrees," described the process by which one could purchase a medical degree. 1985 JOINT REPORT, *supra* note 11, at 11. According to de Mesones, he was just one of many persons in Mexico and the Caribbean who were engaged in the business of selling medical degrees for a price ranging from \$5,222 to \$26,000. De Mesones would provide a diploma, a complete set of transcripts and letters of recommendation from the dean of the medical school. The degrees which were provided by de Mesones were authentic; however they were obtained through fraudulent means. He could also provide "placement" in American hospitals for his "students'" clinical rotations, along with falsified evaluations of their clinical rotations. 1985 JOINT REPORT, *supra* note 11, at 11.

The testimony before the subcommittee in December of 1984 centered on the problem of fraudulent medical credentials procured from "off-shore" or foreign medical schools. Little attention was devoted at this hearing to the problem of fraudulent academic credentials from colleges and schools in the United States.

Efforts at the federal and state level to halt the operations of these diploma mills have been fairly successful. *See, e.g.*, *University of North Am. v. United States*, 835 F.2d 876 (4th Cir. 1987) (attempt by the University of North America to quash a subpoena issued in connection with a government "dipscam" investigation). *See also* *State v. St. Louis College of Physicians and Surgeons*, 295 S.W. 537 (Mo. 1927) (forfeiture of the medical college's charter ordered on grounds that college had fraudulently exercised its powers by selling medical degrees); *State v. Kansas City College of Medicine and Surgery*, 285 S.W. 980 (Mo. 1926) (corporation's franchise was forfeited for selling honorary medical degrees).

17. 1985 JOINT REPORT, *supra* note 11, at 15.

18. 1985 JOINT REPORT, *supra* note 11, at 4.

diploma mills are in the fields of business, counseling and therapy, medicine and health, nutrition, education, and religion.<sup>19</sup>

The demand for brokered credentials is heaviest in medicine and other health care fields. In fact, the problem of fraudulent or questionable medical credentials was so pervasive that the United States House of Representatives convened a hearing on "checkbook doctors" in 1984.<sup>20</sup> The house subcommittee found that "upward of 10,000 or one in every 50 doctors now in hospitals and private practice [had] obtained fraudulent or highly questionable medical credentials."<sup>21</sup>

Other types of fraudulent academic credentials include altered or forged credentials, where a legitimate transcript is altered to reflect better grades or where an entire transcript is created to support a claim of educational attainment. There are several reported cases involving the use of altered or forged academic credentials.<sup>22</sup> For example, in *People v.*

19. 1985 JOINT REPORT, *supra* note 11, at 3.

20. *Fraudulent Medical Degrees: Hearings Before the Subcomm. on Health and Long-term Care of the Select Comm. on Aging*, 98th Cong., 2d Sess. 9 (Comm. Pub. No. 98-495).

21. *Id.*

22. In *Nicholson v. Ambach*, 436 N.Y.S.2d 465 (App. Div. 1981), the court confirmed the revocation of a registered nurse's license upon the recommendation of a hearing panel which had determined that the nurse had submitted a false and fraudulent transcript from Long Island University in order to obtain a school nurse teacher's certificate.

The court in *People v. Sanchez*, 33 Cal. App. 3d 413, 109 Cal. Rptr. 56, 57 (1973) affirmed the defendant's conviction under a California statute which prohibited the use of "any diploma or degree evidencing the undertaking or completion of any course of study or scholastic achievement attained if, in fact, said course of study has not been undertaken nor completed or if such scholastic achievement has not been attained."

The defendant, in response to his employer's request to supply verification of his claimed educational experience, had handed his employer a fraudulent diploma from the University of California at Santa Barbara. The defendant claimed that he could not be prosecuted under the California statute because he had not given the fraudulent document to his employer. The court found that the "temporary delivery of fraudulent diploma to another constituted a giving of such document within the statute." *Id.* at 416. Moreover, the court found evidence that Sanchez had previously misrepresented himself to be a graduate of the University of California at Santa Barbara was logically relevant. *Id.* at 417.

In *Latreille v. Michigan State Bd. of Chiropractic Exam.*, 357 Mich. 440, 98 N.W.2d 611 (1959), the court affirmed the suspension of the petitioner's license upon a finding that the petitioner had supplied false information on his application and submitted an altered matriculation-certificate so that he would be exempt



*Culpepper*<sup>23</sup> the Colorado Supreme Court withheld the petitioner's admission to the bar on the ground that he had secured admission to the University of Denver through the use of a false and fraudulent transcript. In seeking admission to law school, the petitioner claimed that he was a magna cum laude graduate of the University of Akron with a bachelor of arts degree. In fact, the petitioner did not graduate from the University of Akron; he only attended classes there for three years. The petitioner acknowledged that the information on the transcript he submitted for admission to law school was not genuine and that the transcript bore neither the authentic signature nor seal. The court labelled the petitioner's actions "base misrepresentation" and held that he was not qualified for admission to the bar.<sup>24</sup> The State of Maryland recently successfully prosecuted a woman who had falsified a diploma and altered a transcript to support her claim that she had graduated from the University of Maryland. The woman had put her name on a copy of an authentic diploma and had altered a transcript to indicate courses which she never took and grades which she had not earned.<sup>25</sup>

The forgery or alteration is sometimes accomplished by "insiders." For example, two employees of Cheney University were recently sentenced for their involvement in altering the computer grade records of some twenty-one students. According to newspaper accounts, one of the employees who worked in the computer center received \$1,075 to change

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from a basic science examination requirement.

See also *State v. Josefsberg*, 275 Wis. 142, 81 N.W.2d 735 (1957) (presentation of forged documentation to support claim that defendant had graduated from the Medical School of the University of Vienna); *Giroux v. Board of Dental Examiners*, 322 Mass. 251, 76 N.E.2d 758 (1948) (petitioner's license to practice dentistry revoked for presenting a forged diploma to support his claim that he was a graduate of a college granting degrees in dentistry despite the fact that the petitioner had been acquitted of all criminal charges in connection with the false claim).

In 1987, the Wisconsin Supreme Court suspended for one year the license of an attorney who had furnished her employer with a certified law school transcript which contained altered grades. See *In the Matter of Disciplinary Proceedings Against Jean Robinson*, No. 86-0198-D (Wis. Sup. Ct. 1987), reported in 57 *The B. Examiner* 13 (1988).

23. *People v. Culpepper*, 645 P.2d 5 (Colo. 1982).

24. *Id.* at 6.

25. *Washington Post*, Dec. 25, 1988, at A2, col. 3.

the grades. The two employees were charged with unlawful use of a computer, forgery, bribery and conspiracy.<sup>26</sup>

There are also cases involving persons who have simply assumed the academic credentials of another.<sup>27</sup> One case involved a professor at George Washington University who assumed the identities and credentials of at least a dozen other persons in applying for teaching positions at other institutions.<sup>28</sup> In another case, the South Carolina Supreme Court disbarred an attorney after discovering that she had assumed the identity, transcript and LSAT score of another to gain admission to the University of South Carolina Law School.<sup>29</sup>

Finally, within the broad category of fraudulent academic credentials are those cases of embellished credentials in which the credential holder overstates or falsely states his or her qualifications either on a resume or application.<sup>30</sup> The

26. Chronicle of Higher Education, Aug. 3, 1988, at A2, col. 3. Two other incidents of fraud by "insiders" were recently reported. New York Times, Jan. 9, 1987, B, col. 5. (high school guidance counselor who was accused of altering two students' transcripts recently admitted to a misdemeanor charge of possessing a forged instrument); Los Angeles Times, July 22, 1986, (Part II) at 1, col. 5 (former employee of the University of Southern California pleaded guilty to assisting in a grade altering scheme).

27. In *People v. Russel*, 29 Cal. Rptr. 562 (Dist. Ct. App. 1963), the defendant was prosecuted for forgery and false impersonation of another for his attempt to obtain a transcript from San Diego State College by assuming the identity of Robert G. Anaya.

The subcommittees which investigated fraudulent credentials reported several cases of assumed credentials. In one case a pharmacist twice assumed the identity and credentials of physicians; he practiced medicine with these assumed credentials until he was arrested. Another case involved a person who had assumed the identity of a psychiatrist and who at the time of his arrest had a caseload of more than 300 patients. 1985 JOINT REPORT, *supra* note 11, at 29.

28. 1985 JOINT REPORT, *supra* note 11, at 28; *see also* Reuter News Service, Mar. 24, 1983 (a.m. cycle).

29. *Colleges Step Up Battle Against Degree Fakers*, U.S. NEWS & WORLD REPORT, May 1, 1978, at 97.

30. Before the subcommittee investigating fraudulent credentials, a representative of Equifax, a nationwide company which conducts pre-employment investigations of job applicants, reported a significant and increasing amount of fraud by job applicants in part because of the strong pressure to demonstrate impressive academic credentials. 1985 Joint Hearings, *supra* note 14, at 112; 1985 JOINT REPORT, *supra* note 11, at 32. According to the results of a survey by Equifax of 100 of its case files, 57% of the files contained discrepancies in the reported information. These discrepancies fell into thirteen major categories of which five directly involved academic credentials (dates of enrollment, grade point average, major, record of attendance, and date of graduation). 1985 JOINT REPORT, *supra* note 11, at 32.

vast majority of the reported cases on fraudulent academic credentials involve embellishment or false representations on resumes or applications. The use of embellished academic credentials or false representations may be discovered in the licensing process where, for example, a background investigation is conducted;<sup>31</sup> embellished credentials may be discovered in the application process;<sup>32</sup> and they may become a

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The subcommittee reported several examples of resume manipulations which it had discovered in the course of its investigation into fraudulent credentials. These examples included the case of a young physician who was being considered for a teaching position on the basis of his impressive record of 118 research papers. Upon further examination of his record it was revealed that in fact the research reported on the applicant's resume had never been done.

In another case, the subcommittee reported, the employer of a woman who claimed to have obtained a Bachelor of Science in Mechanical Engineering in the 1940's contacted its employee's alma mater for verification of the degree. Upon inquiry the employer learned that the school had not started to offer degrees in Engineering until 1961; moreover, the employer learned that its employee had never graduated from or even attended the institution. 1985 JOINT REPORT, *supra* note 11, at 34.

31. The New York Supreme Court revoked an attorney's admission to practice upon finding that, among other misrepresentations on the background questionnaire, the applicant had falsely stated that he received a degree from Yeshiva College when in fact he had not. *In re Mishkoff*, 524 N.Y.S.2d 218 (App. Div. 1988).

The petitioner in *In re Greenblatt*, 2 N.Y.S.2d 569 (N.Y. Sup. Ct. 1938), was similarly denied admission to practice law based on the court's finding that on his application for admission the petitioner had attempted to conceal the fact that he had been subject to disciplinary proceedings at the University of Maryland, and because he had attempted to enlist the aid of the registrar to conceal this fact.

In *State ex. rel. Heiss v. Osborn*, 117 A.2d 88 (1955), the petitioner sought to compel the Commissioner of Health to issue a certificate of registration to permit him to practice chiropractic. The court declined to do so on the basis that on his application for registration the petitioner had provided false information which was designed to mislead. The court held that "[i]t would . . . be contrary to the public interest for the court to lend its assistance to one who deals so carelessly with the truth." *Id.* at 92. *But see* *State Bd. of Registration for Professional Engineers v. Antonio*, 159 Colo. 51, 409 P.2d 505 (1966) (misrepresentation on application for registration that applicant had attended high school was not a material misrepresentation which warranted revocation of registration).

32. In *North v. West Va. Bd. of Regents*, 332 S.E.2d 141 (W. Va. 1985), the court upheld the expulsion of a fourth year medical student who had falsified his application for admission to medical school. In another case a law school applicant failed to disclose on his application the fact that at the time of the application he was incarcerated. *Martin v. Helstad*, 578 F. Supp. 1473 (W.D. Wis. 1983). Instead the applicant only disclosed the existence of a prior conviction, noting that he had been fully pardoned. The applicant further misled the law school about the status of his conviction by falsely claiming that the conviction was going to be vacated. The plaintiff's admission to law school was revoked after

factor in employment-related litigation.<sup>33</sup>

Given ideal conditions, just about any academic credential can be fraudulently obtained or manipulated.<sup>34</sup> Access

a hearing by the law school.

33. See, e.g., *Smith v. General Scanning, Inc.*, 832 F.2d 96 (7th Cir. 1987) (the plaintiff failed to show he was qualified for the position; he admitted that he had falsified his resume to indicate that he had the required college degree); *Robinson v. U. S. Air Force*, 635 F. Supp. 108 (D.D.C. 1986) (under Air Force regulations which provide for removal as a remedy for falsification, exaggeration or concealment of a material fact in connection with any official document, submission of false information about education and prior work experience on federal employment application warranted discharge of the plaintiff); *Barszcz v. Board of Trustees of Community College Dist. #504*, 400 F. Supp. 675 (N.D. Ill. 1975) (the court upheld the termination of the plaintiff who had falsely stated on the application for employment that he would soon receive a master's degree; although he never received the degree, he continued to receive the benefits of the degree and failed to inform his employer of his true status); *Scott v. Commonwealth*, 82 Pa. Commw. 113, 474 A.2d 426 (1984) (claimant's misrepresentation of educational background constituted willful misconduct which disqualified him for unemployment compensation); *But see Harris v. Employment Division*, 83 Or. App. 443, 732 P.2d 64 (1987) (misstatement of educational credentials was not intentional therefore claimant could not be denied unemployment benefits on the basis she was fired for misconduct); *Morford v. A. Sulka & Co.*, 433 N.Y.S.2d 573 (N.Y. Sup. Ct. 1980) (fact that former president and chief operating officer of the company falsely claimed to have a degree in Business Administration from Columbia University might establish the right of the defendant in a breach of employment claim to offset, but it could not be the basis for rescission because the defendant was unaware of the fraud at the time of the plaintiff's discharge).

The embellishment or falsification of academic credentials is, on occasion, discovered in the examination of witnesses. See, e.g., *Imbler v. Craven*, 298 F. Supp. 795, *aff'd per curiam*, 424 F.2d 631 (9th Cir. 1970), *cert. denied*, 400 U.S. 865; *People v. Cornille*, 448 N.E.2d 857 (1983); *State v. Glouser*, 226 N.W.2d 328 (1975), *Ginnelly v. Continental Paper Co.*, 57 N.J. Super. 480, 155 A.2d 154 (1959).

As the following candid revelation demonstrates, sometimes the "guilty party" confesses to the embellishment:

When I applied for my first job in New York, and wrote my first resume, I felt that to acknowledge I hadn't finished college would mean not getting a job I desperately needed and felt I could do well. It didn't seem grandly fraudulent to add a graduation year because, had life made sense, I would have graduated. That resume took me through three jobs, until I was confident enough to return my fictitious college degree.

O. Edwards, *About Men; Thrice-Told Tales*, New York Times, Mar. 20, 1988 (Magazine) at 18, col. 4.

34. Non-academic credentials, like financial aid applications are also falsified or altered for fraudulent purposes. See Buchanan, *Traps for the Unwary Financial Aid Officer*, NASPA JOURNAL. See also *United States v. Olatunji*, 872 F.2d 1161 (3d Cir. 1989) (falsification of financial aid information); *Anapol v. University of Del.*, 412 F. Supp. 675 (D. Del. 1976) (tenured professor dismissed for falsifying documents in promotion dossier).

to legitimate educational records is guaranteed by the Family Educational Rights and Privacy Act,<sup>35</sup> and recent technological advances in printing and duplication methods make the forger's work simple.<sup>36</sup> As more institutions computerize their student records, the opportunity for unauthorized access to records increases. Brokered credentials are readily available from diploma mills.

Moreover, the verification processes of many of the educational institutions, potential employers and others who rely on asserted academic credentials are often lax or nonexistent.<sup>37</sup> When one considers these facts in light of the significant role that academic credentials play in employment and educational opportunities, the dimensions and significance of the problem are easily understood. The real difficulties are encountered in the search for solutions to this growing problem.

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35. 20 U.S.C. § 1232g (1974 & 1989 Supp.).

36. Some colleges have started using special paper which makes detection of forgeries and alterations easier. See, e.g., U.S. NEWS & WORLD REPORT, Aug. 6, 1984, at 61.

37. Malizio & Whitney, *Educational Credentials in Employment: A Nationwide Survey* (May 1985) (a survey conducted by the American Council on Education's Office of Educational Credit and Credentials).

Employers also have a responsibility to be more diligent in their efforts to verify the academic credentials asserted by applicants. The results of a 1985 survey of 1,500 hiring managers suggests that employers are, indeed, quite lax in their credential verification procedures. In fact, the survey revealed that:

Approximately 25% of the employers . . . request a copy of [the] job applicant's educational credential (i.e. copy of actual diploma). Nearly 40% request a copy of the educational transcript (e.g. listing of courses and the grades obtained) . . . . An additional ten percent of the employers verify the awarding of credentials for positions requiring a college degree by telephoning the institution directly rather than by requesting copies of transcripts or diplomas.

*Id.* at 3-4.

One of the primary reasons that employers are not more diligent in their background investigations of potential employees is the high cost of such investigations. Estimates of the cost of these background investigations range from \$50 to \$400 per case to \$250 to \$1500 per case. *The Boom in Digging into a Job Applicant's Past*, BUS. WEEK, June 11, 1984, at 68 and *Employee Honesty Tests Move to New Frontiers*, BUS. INS., Sept. 19, 1988, at 3. Some employers also voice concern that background checks may violate the privacy rights of potential employees. *Id.*

### III. INSTITUTIONAL RESPONSE TO FRAUDULENT ACADEMIC CREDENTIALS

The societal interest in ensuring that the use of fraudulent academic credentials stops is clear. Each time an academic credential is fraudulently used or obtained, the integrity of the academic process is adversely affected.<sup>38</sup>

To protect the integrity of the academic process, colleges and universities should develop internal operating procedures and institutional policies that prohibit the use of fraudulent academic credentials.<sup>39</sup>

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38. L. GUBSER & R. MILLARD, *ACADEMIC FRAUD: A THREAT TO QUALITY* (Apr. 1982) (a publication of the American Association of State Colleges and Universities).

The Illinois legislature has addressed these interests succinctly in its declaration of policy in an act regulating the granting of academic degrees. The declaration provides:

It is the policy of this State to prevent deception of the public resulting from the offering, conferring and use of fraudulent or substandard degrees. Since degrees are constantly used by employers in judging the training of prospective employees, by public and private professional groups in determining qualifications for admission to and continuance of practice, and by the general public in assessing the extent of competence of persons engaged in a wide range of activities necessary to the general welfare, regulation by law of such evidences of academic achievement is in the public interest. To the same end, the protection of legitimate institutions and of those holding degrees from them is also in the public interest.

ILL. ANN. STAT. ch. 144, para. 231 (Smith-Hurd 1986).

Employers also have a strong interest in ensuring that the proliferation of fraudulent academic credentials is halted. In fact for employers, there is often an economic incentive to detect and halt the use of fraudulent academic credentials. "Some estimates place employee dishonesty alone as the primary cause of as many as 30% of business failures." 1985 JOINT REPORT, *supra* note 11, at 115.

39. The discussion in this section is restricted to the implementation of procedures and policies which apply to a student's or a potential student's use of fraudulent academic credentials. Excluded from this discussion is any consideration of procedures or policies which would cover the use of a fraudulent academic credential by a faculty or staff member.

The Law School Admission Council (LSAC) and the Association of American Medical Colleges (AAMC), two organizations which handle thousands of academic credentials annually, have developed specific policies and procedures for handling cases of misconduct in the admissions process. LAW SCHOOL ADMISSION COUNCIL, *RULES GOVERNING MISCONDUCT IN THE ADMISSION PROCESS* (June 1989) [hereinafter *LSAC RULES*]; ASSOCIATION OF AMERICAN MEDICAL COLLEGES, *POLICIES OF THE AAMC FOR THE TREATMENT OF IRREGULARITIES IN THE MEDICAL SCHOOL ADMISSION PROCESS* (1976) [hereinafter *AAMC POLICY*].

The LSAC procedure for handling allegations of misconduct in the admissions process begins with an investigation of the allegations by LSAC or Law

The first step in the development of these internal operating procedures is the implementation of a regular system for verification of information supplied to and by educational institutions. Some institutions, as a matter of policy, routinely acknowledge the receipt of all information submitted in support of an application. This acknowledgment is sent to the person or institution which is the originator of the information. On occasion, the receipt of such an acknowledgment

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School Admission Service staff. If the staff concludes that there is "reasonable evidence of misconduct," the candidate is notified by letter. This letter:

(1) outlines the nature of the suspected misconduct; (2) describes the information on which the suspicion is based; (3) describes the procedure to be employed in resolving the matter . . . (4) invites the candidate to respond (within a specified time period), indicating, where applicable, specific steps the candidate might take to remove the doubt; and (5) notes that any response will be included in any materials sent to a panel of the Subcommittee.

LSAC RULES, *supra*, at 2.

The staff may then submit its findings, along with the candidate's response, to a panel of the Subcommittee on Misconduct in the Admission Process. This Subcommittee may then, upon the request of a candidate, hold a telephonic or personal hearing. If the Subcommittee finds misconduct by the preponderance of the evidence, its report is forwarded to all affected persons or institutions and the invalid data is cancelled. The policy further provides for an appeal to the Chief Operating Officer of the LSAC. LSAC RULES, *supra*, at 4.

The AAMC procedure for investigating discrepancies in credentials or irregularities in the admission process is, by comparison, quite simple. The policy provides that:

The applicant is informed of the existence of the investigation and is invited to provide an explanation of the facts and circumstances under review. In addition, the applicant is provided a copy of the draft final report of the investigation prior to its being distributed and is invited to identify any factual errors the report may contain. The final report includes, unless the applicant requests otherwise, a complete copy of any explanation or justification provided by the applicant.

AAMC POLICY, *supra*, at 1. The AAMC forwards a copy of its final report to all medical schools to which the student has applied or matriculated.

In 1989, the AAMC handled a total of 114 new cases and 20 reopened cases of alleged irregularities in the admission process. Of these 134 cases, seven involved the submission of false biographical information; three involved the submission of forged transcripts; five involved unauthentic letters of recommendation; nine involved unacknowledged prior matriculation; twelve involved unacknowledged previous applications to medical schools; five were early decision violations; five involved incomplete academic records; and forty involved the failure to pay the required fees. Another twenty-four cases involved unacknowledged academic suspensions or dismissals. This last category of cases may be artificially inflated by the fact that in a number of the cases, the failure to acknowledge the prior academic or disciplinary suspension was due to ambiguity in the instructions on the application form. Telephone interview with William Kennish, Vice President of Operations for the Law School Admission Service (Aug. 30, 1989).

will prompt the recipient to notify the institution that he or she did not in fact supply the information. It is likely that educational institutions will find it impractical to attempt to verify *all* of the information they receive from applicants. In fact, because of the nature and volume of records handled by most colleges and universities, it may be quite difficult to implement an across the board verification system without paralyzing the institution's records office. Records offices may have to resort to random audits or perhaps targeted audits in the areas where the use of fraudulent academic credentials is most prevalent or where their use is not otherwise easily detected.

Altered, forged and brokered credentials can be detected with relative ease if the following factors are considered in an evaluation and audit of the record presented:

1. whether the credentials were mailed directly from the records office at the issuing institution;
2. whether the envelope containing the credential was postmarked in the city where the institution is located;
3. whether the envelope has an institutional meter mark rather than a postage stamp;
4. whether the document was issued recently;
5. whether the credential is authentically and clearly signed and sealed;<sup>40</sup>
6. whether there is consistency in type font, format, etc.<sup>41</sup>

In addition to ensuring that the records presented to them are legitimate, educational institutions should also take steps to prevent the fraudulent use of their own legitimate academic credentials. For example, official transcripts should never be issued directly to the student; unofficial transcripts which are issued directly to the student should bear a no-

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40. Some colleges and universities are beginning to use or explore the use of transcripts which have laser printed signatures on secured paper which cannot be altered without detection. The use of the secured paper and a laser printed signature makes raised, embossed seals unnecessary. See Gunter & Orndorff, *Transcript Seals - Let's Take Another Look* (Oct. 11, 1988) (unpublished paper on file with author).

41. American Association of Collegiate Registrars and Admissions Officers, *Misrepresentation in the Marketplace: Recognizing Fraudulent Credentials* 19 (Feb. 1987).

Employers would be well advised to consider adopting similar internal operating procedures to assist them in the detection of this kind of fraudulent academic credentials.



tation "issued to the student"; office procedures should be reviewed regularly to ensure the security of seals, paper and student records;<sup>42</sup> and information from student records should never be disclosed without written authorization.<sup>43</sup>

These internal operating procedures should be supplemented by institutional policies which expressly prohibit the use of fraudulent academic credentials. In order to be effective and legally sound, these policies must be consistent with and serve the interests of the institution and its students. The identification and articulation of these interests is complicated by the fact that the law in this area is neither well-developed nor consistent.

There are two primary institutional interests in the regulation of fraudulent academic credentials: protection of the academic decision-making process and deterrence of fraudulent activity.<sup>44</sup>

The interests of the students are not so easily described. The courts have recognized generally that a student has some type of interest in the admission process and in the receipt or retention of a degree, diploma, certificate or other similar credential. However, the exact legal nature of these interests

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42. The Chicago Tribune recently reported the case of an employee of Northern Illinois University who was dismissed from her position as an assistant affirmative action director. In obtaining the position she had used forged transcripts to support her false claim that she had successfully completed two years of legal education. The campus police searched her residence and found, among other incriminating evidence, ink stamps bearing signatures and dates and four embossed seals from three universities. *Ex-NIU Director Charged with Forgery*, Chicago Tribune, June 16, 1989, § 2, at 3.

43. Some of these suggestions are from Bruce T. Shutt, former President of the American Association of Collegiate Registrars and Admission Officers. These suggestions were presented before the House Subcommittee on Health and Long Term Care. 1985 *Joint Hearings*, *supra* note 14, at 78-83.

44. See, e.g., *Bleicker v. Board of Trustees of Ohio State Univ.*, 485 F. Supp. 1381, 1389 (S.D. Ohio 1980) ("defendants have a considerable interest in protecting the integrity of their published academic standards and disciplinary regulations").

The Association of American Medical Colleges (AAMC) has established a policy on irregularities in the medical school admissions process which provides that:

The purpose of an irregularity investigation is not merely to assure that the schools possess currently accurate biographical and academic information, but also to inform schools of any evidence of attempts to subvert the admission process because such information may legitimately bear on the schools' assessment of an applicant's suitability.

AAMC POLICY, *supra* note 39.

and the type of protection accorded to them vary greatly according to whether the student is seeking admission; whether the student has already been admitted but has not yet enrolled; whether the student is enrolled; or whether the student has graduated.<sup>45</sup>

Some courts have refused to recognize the interest of a student who is seeking admission to an institution as anything more than a subjective expectation<sup>46</sup> or a privilege.<sup>47</sup> Other courts have given the interest constitutional protection as either a property<sup>48</sup> or a liberty<sup>49</sup> interest.

The lower courts have fairly uniformly held (or assumed) that enrolled students, have a constitutionally protected right to continued enrollment;<sup>50</sup> to date, however, the United

45. The interests of students at private institutions may also vary according to the terms of their "contract" with the institution.

46. *Martin v. Helstad*, 578 F. Supp. 1473, 1480 (W.D. Wis. 1983). The issue before the court in *Martin* was "whether, prior to matriculation a successful applicant has a property interest in an accepted offer of admission to an academic program." *Id.* In dicta the court noted that "[a]n applicant has no constitutional due process right to a hearing to prove his or her qualifications for admission and no constitutional right to admission." *Id.* See also *Brookins v. Bonnell*, 362 F. Supp. 379, 383 (E.D. Pa. 1973).

47. *Phelps v. Washburn Univ. of Topeka*, 634 F. Supp. 556, 570 (D. Kan. 1986) (*Phelps I*); *Phelps v. Washburn Univ. of Topeka*, 632 F. Supp. 455 (D. Kan. 1986) (*Phelps II*).

48. *Hall v. University of Minn.*, 530 F. Supp. 104, 107 (D. Minn. 1982).

49. *Grove v. Ohio State Univ. College of Veterinary Medicine*, 424 F. Supp. 377 (S.D. Ohio 1976). In *Grove*, the court compared the status of a rejected applicant to veterinary school to that of a rejected applicant for admission to the bar to find that the denial of admission infringed on the applicant's liberty interest. *Id.* at 382.

The court in *Phelps II* indicated, in dicta, that where there was a denial of admission with an underlying charge of dishonesty or publication of the reasons for denial, the denial might affect the liberty interest of the applicant. *Phelps v. Washburn University of Topeka*, 632 F. Supp. 455 (D. Kan. 1986). See also *Hall v. University of Minn.*, 530 F. Supp. 104, 108 (D. Minn. 1982) ("if the University intends to interject evidence concerning allegations of improper conduct of the applicant into the admissions process, it must provide the applicant an opportunity to give his or her side of the story.").

50. In *Martin*, the court recognized the distinction between students who are admitted to study and those who have matriculated. *Martin v. Helstad*, 578 F. Supp. 1473 (W. D. Wis. 1973). The court characterized the accepted applicant's interest prior to matriculation as a "slight property interest." *Id.* at 1482. See also *Martin v. Helstad*, 699 F.2d 387, 391 (7th Cir. 1983) ("We agree with the district court that prior to beginning classes, the appellant's interest in his law school admission is not entitled to great weight.").

In *Brookins v. Bonnell*, 362 F. Supp. 379, 383-84 (E.D. Pa. 1973), the court stated that:

It may well be that a potential student enrollee in a publicly funded

States Supreme Court has declined to rule on the issue.<sup>51</sup>

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educational institution has no constitutional or "civil right" to a "due process hearing" to prove his qualifications and right to admission. Once a student has been formally admitted and satisfactorily completed a full semester of classes, justice would seem to require that the student be afforded a fair opportunity to establish that he had fully met the entrance requirements, or, if not, that there existed countervailing considerations (such as some fault on the part of the College) that would preclude dismissal."

51. *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214 (1985). The Court had the opportunity to rule on this issue in *Ewing* but it declined to do so. Instead, following the lead of the parties and several lower federal courts, the Supreme Court assumed the existence of a property right. *Id.*

See also, *Schuler v. University of Minn.*, 788 F.2d 510 (8th Cir. 1986) (existence of a property or liberty interest assumed), *cert. denied*, 479 U.S. 1033 (1986); *Bleicker v. Board of Trustees of Ohio State*, 485 F. Supp. 1381, 1386 (S.D. Ohio 1980) (court assumes that a "tuition-paying student enrolled at the publicly supported Veterinary College has a property interest in completing her professional education."); *Harris v. Blake*, 798 F.2d 419 (10th Cir. 1986) (a Colorado statute which provides the basis of a claim of entitlement to public education sufficient to create a property interest), *cert. denied*, 479 U.S. 1033 (1986); *Abbariao v. Hamline Univ. School of Law*, 258 N.W.2d 108, 112 (Minn. Sup. Ct., 1977) (without any analysis and for the purpose of ruling on the lower court's dismissal of the plaintiff's complaint, the court simply stated that "a student's interest in attending a university is a property right protected by the due process clause.").

The court in *North v. West Va. Bd. of Regents*, 160 W. Va. 248, 233 S.E.2d 411 (1977), *cert. denied*, 475 U.S. 1033 (1977), recognized both a liberty and a property interest in continued enrollment based on the West Virginia constitution. The court held that:

A student's interest in obtaining a higher education with its concomitant economic opportunities, coupled with the obvious monetary expenditure in attaining such education, gives rise to a sufficient property interest to require procedural due process on a removal. From a liberty standard there can be little question that an expulsion from college damages the student's good name, reputation and integrity, even more so than expulsion from high school.

*Id.* at 415.

In *Martin*, 699 F.2d at 389 n.3, the court noted the cases that discuss a student's property interest in his or her education acknowledge a property interest only in continuing the education while citing *Betts v. Board of Educ. of City of Chicago*, 466 F.2d 629, 633 (7th Cir. 1972); *Hagopian v. Knowlton*, 470 F.2d 201, 209 (2d Cir. 1972); *Dixon v. Alabama St. Bd. of Educ.*, 294 F.2d 150, 157 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961); and *Zitzer v. Walsh*, 352 F. Supp. 438, 443 (D. Conn. 1972).

But *cf.*, *Martin*, 699 F.2d 387 (7th Cir. 1983). The court expressed concern "whether a mutually explicit understanding based on an offer and acceptance can exist when the offer is allegedly procured by the applicant's fraud." *Id.* at 390. At the same time, however, the court recognized that if it were to hold that the applicant's fraud prevented the creation of a property interest, that the law school could "deny an applicant a hearing merely by saying the applicant lied." *Id.*

In an employment case, *Kekai v. Hargrave*, 649 F.2d 748 (9th Cir. 1981),

The courts, which have considered the rights of students who have graduated, agree that a degree holder has a constitutionally protected property interest in his or her degree.<sup>52</sup>

It is generally sufficient to say that an institution cannot act unilaterally in disciplining students who are accused of using fraudulent academic credentials, and that students have some type of interest which must be accommodated in fashioning an institutional policy on fraudulent academic credentials.

It is not an easy task to formulate an effective policy which can serve and promote institutional interests at the same time it protects the varying rights of the affected students, and yet withstand most legal challenges. The cases in this area, however, do provide some guidance.

First, it is clear that no matter how the institution characterizes its interest in prohibiting the use of fraudulent academic credentials, its policy must clearly describe the prohibited conduct. This description should include, but need not be limited to: the falsification, alteration or forgery of academic credentials; the use or attempted use of brokered, falsified, altered or forged credentials; and the submission of false information or misrepresentation of facts on an application for admission or employment or for any other purpose to gain an advantage over another person.<sup>53</sup>

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the court found that the appellant did not have a constitutionally protected property interest in employment which she had obtained through fraudulent and material misrepresentations about her qualifications. In *Kekai*, the court held that the appellant could not have a "... legitimate entitlement to continued employment in a position she obtained as a result of a deliberate and material misrepresentation." *Id.* at 752.

52. In *Crook v. Baker*, the court held that a student has both a liberty and a property interest in his degree. *Crook v. Baker*, 584 F. Supp. 1531 (E.D. Mich. 1984), *vacated*, 813 F.2d 88 (6th Cir. 1987).

In *Waliga*, the plaintiffs sought injunctive relief to prevent the defendant university from revoking their degrees because of discrepancies in their grades. In holding that the university had the inherent authority to revoke an improperly awarded degree, the Supreme Court of Ohio ruled that "[a] degree-holder possesses a property right in and to his degree and that substantial right cannot be taken away 'except pursuant to constitutionally adequate procedures.'" *Waliga v. Board of Trustees of Kent State Univ.*, 488 N.E.2d 850, 853 (Ohio 1986).

See also *Morrow v. Goldberg*, 672 F. Supp. 766 (D. Vt. 1987) (a student has a property interest in the academic credit reflected on his or her record).

53. One law school's honor code provides that:

A student may not knowingly misrepresent facts about him/herself or about any other person, to the University administration, the faculty

Students should also be given notice of the penalties which may be imposed for the use of fraudulent academic credentials. For example, one University's policy provides that:

[i]f a student knowingly makes a false statement or conceals material information on an application for admission, registration card, or any other University document, his registration may be cancelled. If such falsification is discovered after the student has established an academic record at the University, he may be subject to dismissal from the University. Such a student will be ineligible (except by special action of the faculty) for subsequent registration at the University.<sup>54</sup>

The courts have upheld the imposition of penalties ranging from allowing the student to withdraw from school,<sup>55</sup> to rescission of admission,<sup>56</sup> to expulsion,<sup>57</sup> or to revocation of the student's degree.<sup>58</sup> In a case involving the falsification of

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or the administrative staff of the law school or to any court or governmental or non-governmental agency or firm in connection with obtaining an academic or financial benefit for him/herself or for another person or with the intention to injure another student academically or financially, nor shall he/she provide untrue information for the purpose of admission or registration at the law school, to any law school program, or for any use in connection with seeking employment. The obligation is a continuing obligation, and the requirement of accuracy and truthfulness extends beyond the filing of any application, resume or similar document or assertion. Notice of material changes in circumstances must be provided to persons relying on such documents or assertions.

AM. U. WASH. C. OF L., 1983-84 CATALOGUE 64 (1983).

54. GEORGE WASH. U. GUIDE TO STUDENT RIGHTS AND RESPONSIBILITIES 1.

55. In *DeMarco v. University of Health Sciences/The Chicago Medical School*, 40 Ill. App. 3d 474, 352 N.E.2d 356 (1976), the student, who was six weeks away from the completion of his fourth year of medical school, was allowed to "resign" from medical school after it was discovered that he had falsely stated on his application that he had never attended another medical school.

56. In *Martin v. Helstad*, 699 F.2d 387 (7th Cir. 1983), *on remand*, 578 F. Supp. 1473 (D. Wis. 1983), the institution revoked the student's admission to law school after it was discovered that the student had failed to disclose on his application that at the time of the application he was in prison, having been convicted of aiding and abetting interstate transportation of forged securities.

57. The court in *North v. West Va. Bd. of Regents*, 332 S.E.2d 141 (1985) upheld the expulsion of a fourth year medical student who had secured his admission to medical school through fraud. The West Virginia Supreme Court of Appeals said "any action by the President of the University or the Board of Regents, short of expulsion, would necessarily have constituted some degree of reward for fraudulent misconduct . . . ." *Id.* at 147.

58. *Crook v. Baker*, 584 F. Supp. 1531 (E.D. Mich. 1984), *vacated*, 813 F.2d

an application to medical school, the court concluded that expulsion of the student "may well have been the only appropriate response available to the University."<sup>59</sup>

The policy on fraudulent academic credentials should also include a very broad definition of "student." Often an institution's disciplinary or academic code applies only to persons who have been admitted to the institution and who are enrolled as students. Unless the definition of student is expanded, it may be difficult for an institution to assert jurisdiction over a person who uses fraudulent credentials in the admissions process prior to the time that he or she is a student.<sup>60</sup> One way to avoid this problem is to expand the definition of student to include those persons who seek admission to the institution. Another solution is to provide on each application form a proviso that the submission of an application for admission makes the applicant subject to all rules and regulations of the institution. For example, one institution's application provides that:

the submission of an application for admission to the University represents an optional and voluntary decision on the part of the prospective student to partake of the program and privileges offered by the University pursuant to the policies, rules and regulations of the Board of Regents, the University, and the . . . University Code of Student Rights and Responsibilities.<sup>61</sup>

Most importantly, the policy must accommodate the students' interest by affording those students accused of using fraudulent academic credentials adequate procedural due

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88 (6th Cir. 1987). See also Sullivan, *College or University Power to Withhold Diplomas*, 15 J.C.U.L. 395 (1989); Stevens, *Rescinding a College Degree: "Ungowning and the Law*, 23 AM. BUS. L.J. 467 (1985).

59. North, 332 S.E.2d at 147.

60. Although this argument was ultimately unsuccessful, this is precisely the point the plaintiff in *North v. West Va. Bd. of Regents* made in challenging his dismissal from the school of medicine for falsifying his application to the school of medicine. *Id.* at 144. In response to North's argument that the institution had no authority to discipline students for acts committed prior to their admission to the institution, the court said it "employs legal reasoning akin to circus contortionism and ignores what is fundamental knowledge among all students of higher education, namely, that a person who cheats to get into school and gets caught will be expelled." *Id.* at 144-45.

61. WEST VA. U. CODE OF STUDENT RTS. AND RESPS. 67 (rev. 1986) (copy on file with the author).

process, while also serving the institution's interest—whether it be the protection of the academic decision making process or the deterrence and punishment of fraudulent conduct. Given the varying interests of both the institution and the student and the uncertain state of the law in this area, the formulation of a legally sufficient procedure for handling allegations of this type becomes problematic.

The use of fraudulent academic credentials is conduct which falls into a grey area between academic and disciplinary matters, making it difficult to determine the type of protection which should be afforded to the student who is accused of engaging in the prohibited conduct. For example, if the institution's only interest is the protection of the academic decision-making process, then a policy which treats allegations of fraud as an academic matter involving the student's failure to meet the institution's academic standards will be sufficient to meet the institutional interest. So long as this policy focuses on the "academic fitness"<sup>62</sup> of the student, and not his or her conduct, the student is entitled to only minimal procedural protection. If, however, the institution's primary interest is the deterrence of fraudulent activity or conduct, a different set of considerations will prevail. Where the focus is on the student's conduct and not upon the student's academic fitness, the student is entitled to a greater degree of procedural protection. The type of procedural protection to which the student is entitled will, of course, vary according to the nature of the student's interest.<sup>63</sup>

As a practical matter, the interests of most educational institutions fall somewhere in the middle of a continuum that stretches from maintenance of academic integrity to deterrence of fraudulent activity. Academic matters traditionally involve issues in which the academic fitness of a student is judged; by contrast, disciplinary matters usually involve a violation of a rule of conduct. Justice Powell addressed this distinction in his concurring opinion in *Horowitz*<sup>64</sup> where he stated:

[T]he distinction between dismissal for academic deficien-

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62. *Henson v. Honor Comm. of Univ. of Va.*, 719 F.2d 69, 74 (4th Cir. 1983).

63. See *supra* text accompanying note 45.

64. *Board of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78 (1978).

cy and dismissal for misconduct may be decisive as to the process that is due . . . . A decision relating to the misconduct of a student requires a factual determination as to whether the conduct took place or not. The accuracy of that determination can be safeguarded by the sorts of procedural protection traditionally imposed under the Due Process Clause. An academic judgment also involves this type of objectively determinable fact—e.g., whether the student gave certain answers on an examination. But the critical decision requires a subjective, expert evaluation as to whether that performance satisfies some predetermined standard of academic competence. That standard, in turn, is set by a similarly expert judgment. These evaluations, which go far beyond questions of mere “conduct,” are not susceptible of the same sorts of procedural safeguards that are appropriate to determining facts relating to misconduct. Thus, the conclusion that a particular dismissal is academic—that it entails these expert evaluations—is likely to have controlling significance in determining how much and what sort of process is due.<sup>65</sup>

Although the delineation of disciplinary from academic proceedings has been criticized,<sup>66</sup> it is nevertheless a critical factor in student discipline cases. To categorize whether a disciplinary action is academic or non-academic, the courts look at the nature of the decision<sup>67</sup> in question to deter-

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65. *Id.* at 95 n.5 (Powell, J., concurring) (citations omitted).

66. In his concurring and dissenting opinion in *Horowitz*, Justice Marshall expresses his concern about the “. . . talismanic reliance on labels.” *Id.* at 106 (Marshall, J., concurring and dissenting). Justice Marshall’s concern is that these labels will serve as a “substitute for the sensitive consideration of the procedures required by due process.” *Id.*

67. The courts have also looked beyond the nature of the decision to the consequences of the institution’s decision. *See, e.g., Hall v. University of Minn.*, 530 F. Supp. 104 (D. Minn. 1982) in which the court said that even though the plaintiff was denied admission, “the circumstances of this case make it more like an expulsion case than a non-admission case.” *Id.* at 107. The court was influenced by the fact that the plaintiff, a student athlete who was denied admission to the defendant’s University Without Walls program, would lose his scholarship and athletic eligibility as a consequence of the University’s decision.

In *Corso v. Creighton Univ.*, 731 F.2d 529 (8th Cir. 1984), a breach of contract case, the defendant, a private university, expelled the plaintiff from its medical school for cheating on an examination. The university handled the incident as an academic disciplinary matter and turned the matter over to the Dean of the Medical School. The plaintiff claimed that, pursuant to the handbook, his expulsion should have been handled by the University Committee on Student



mine if it involves subjective, evaluative criteria or whether it involves disputed factual questions.<sup>68</sup> The use of fraudulent academic credentials, especially at the initial admission stage, is often intended to affect the outcome of an academic decision. Thus, in this regard, the decision involves subjective, evaluative criteria. However, while the use of fraudulent academic credentials may in fact involve an academic decision, there are often allegations of misconduct which "... require a factual determination as to whether the conduct took place or not."<sup>69</sup>

Because this offense defies easy characterization as either academic or disciplinary,<sup>70</sup> and because the use of fraudulent academic credentials in this setting goes to the heart of academic decision-making, consideration should be given to drafting a separate, hybrid procedure instead of relying on existing academic or disciplinary procedures for handling allegations of this type. This hybrid procedure could permit "trial-type" fact finding where necessary, while preserving the right of the institution to treat the impact of the fraud as an academic matter. Thus, students accused of falsifying or using fraudulent credentials would be entitled to a hearing in which they could confront and challenge the evidence. However, once this factual inquiry was complete, the academic decision-makers would be entitled to regard the conduct as a violation of academic standards; thus, preserving the institution's right to pass on the academic suitability of its

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Discipline. The district court found that the plaintiff had been expelled for lying about cheating on the examination and according to the student handbook was entitled to the procedures applicable to a nonacademic disciplinary offense. The Eighth Circuit disagreed with the lower court's characterization of the offense stating that "[b]ecause the operative facts were premised on an academic matter, it was reasonable to classify the matter as an academic offense." *Id.* at 532.

See also *Grove v. Ohio State Univ., College of Veterinarian Medicine*, 424 F. Supp. 377 (S.D. Ohio 1976); *Martin v. Helstad*, 578 F. Supp. 1473, 1482 (W.D. Wis. 1983).

68. See, e.g., *Horowitz*, 435 U.S. at 87-90.

69. *Id.* at 95 n.5 (Powell, J., concurring).

70. One commentator believes that following *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214 (1985), "the high court is much less inclined to question decisions of public universities to classify matters as academic rather than disciplinary." Roberts, *Public University Responses to Academic Dishonesty: Disciplinary or Academic*, 15 J.L. & EDUC. 369, 379 (1986). Another commentator states that "[d]uring 1986, the courts continued to classify most educational dismissals as academic rather than disciplinary." Dutile, *The Law of Higher Education and the Courts: 1986*, 14 J.C.U.L. 303, 351 (1987).

students.<sup>71</sup>

Institutions must also be mindful of the following issues as they draft their policies on the use fraudulent academic credentials: The first is whether the falsified, misrepresented, altered or withheld information must be material to the ultimate academic judgment in order to justify the imposition of discipline, or whether the degree of materiality should affect the nature of the sanction. Second, whether the misrepresentation or falsification must be intentional to invoke academic sanctions. Third, whether the institution has an obligation to ferret out fraud.

In most fraudulent academic credential cases, materiality is not an issue because the falsification or misrepresentation was clearly material.<sup>72</sup> Furthermore, most institutions' policies do not address the issue of intent.<sup>73</sup> Finally, the courts are divided on the issue of whether there is an obligation to ferret out the fraud. One court held "[t]here is no duty on the part of any officer at our colleges and universities to presume or even to suspect fraud."<sup>74</sup>

Although existing policies in many institutions may technically be sufficient to address the problem of fraudulent academic credentials,<sup>75</sup> the educational community would be remiss in its obligation to society if it were to fail to respond in more effective ways to the problem. One of the most effective ways to respond to the problem of fraudulent academic credentials is to develop and enforce strict institutional policies which prohibit and punish their use. The educational community can also play a significant role in developing solutions to this problem by supporting the efforts of law

71. In *Ewing*, Justice Powell recognized that "[j]udicial review of academic decisions, including those with respect to the admission or dismissal of students, is rarely appropriate, particularly where orderly administrative procedures are followed-as in this case." *Ewing*, 474 U.S. at 230 (Powell, J., concurring).

72. There is a materiality requirement in two of the twelve states that have specific statutes on academic credentials. See *infra* note 94.

73. Seven of the twelve state statutes which specifically prohibit the use of fraudulent academic credentials, apply only to intentional acts. See *infra* note 93.

74. *North v. West Va. Bd. of Regents*, 332 S.E.2d 141, 146 (W. Va. 1985). The student accused of falsifying his application to medical school argued that the University should be estopped from disciplining him because it knew or should have known of the fraud and it failed to act in a timely fashion. *Id.*

75. "[A] compelling argument can be made for the proposition that no rule or formalized written regulation is required to expel a student who gains admission to a college or university by lies and deceit." *Id.* at 145.

enforcement agencies and state legislatures in this area.

#### IV. THE LEGISLATIVE RESPONSE TO FRAUDULENT ACADEMIC CREDENTIALS

As discussed above, the proliferation of fraudulent academic credentials has had an impact on all segments of society. While the burden of detecting and preventing the fraudulent use of academic credentials may, by necessity, fall more heavily on the educational community, the obligation to deter and punish the use of fraudulent academic credentials must be shared jointly by educational institutions, local and federal law enforcement agencies and state legislatures. The remainder of this article will focus on the steps which have been and can be taken by local and federal law enforcement agencies and state legislatures to help the educational community preserve the integrity of legitimate academic credentials.

Although the problem of fraudulent academic credentials received considerable attention during the 1984 and 1986 Congressional hearings, there has been little response to the problem at the national level. Of particular importance to the deterrence and punishment of the use of fraudulent academic credentials was the Subcommittee's recommendation that Congress strengthen the Federal mail fraud statute and create a national computerized clearing house on fraudulent credentials. Despite strong endorsement from the educational community, neither of these recommendations were adopted.<sup>76</sup>

Because much of the activity related to fraudulent credentials involves the use of the mail or telephone, in many cases, the activity would be covered by federal statutes; there are, however, few reported cases of prosecutions brought under these statutes.<sup>77</sup>

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76. 1986 JOINT REPORT, *supra* note 14, at 5-6. The Subcommittee also recommended that Congress authorize the Secretary of Health and Human Services to approve accreditation standards for foreign medical schools, and that states license schools contingent on their compliance with minimum academic and financial requirements. 1986 JOINT REPORT, *supra* note 14, at 5-6.

77. These federal statutes include: 18 U.S.C. § 1341 (1984) (federal mail fraud statute); 39 U.S.C. § 3005 (1980) (false representations through the mail); 18 U.S.C. § 1001 (1976) (false statements to departments or agencies of the United States); 18 U.S.C. § 1343 (1984) (federal wire fraud statute).

Efforts to deter the use of fraudulent academic credentials have been only slightly more successful at the state level, where the range of available options is wider. These options include civil actions for fraud and misrepresentation and criminal prosecutions for forgery, embezzlement, theft of services, or false pretenses or impersonation.<sup>78</sup> Despite the availability of these options, there are relatively few reported cases involving the criminal prosecution of persons who have made or used fraudulent academic credentials.<sup>79</sup>

There appears to be a lack of prosecutorial interest at both the state and federal level in pursuing cases involving fraudulent academic credentials. A number of factors may account for this lack of interest. For the most part, the use of fraudulent academic credentials is not viewed as a serious crime. It is difficult to quantify or even describe the nature of the interest which would be protected by a prosecution

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There are very few reported cases involving prosecutions under the federal mail fraud statute. *See, e.g.*, *United States v. Fowler*, 870 F.2d 656 (4th Cir. Feb. 24, 1989) (Table) (unpublished opinion) (text in WESTLAW) (appeal from convictions of mail fraud and conspiracy to market and sell fraudulent university degrees and transcripts); *United States v. Olatunji*, 872 F.2d 1161 (3rd Cir. 1989) (indictment under federal mail fraud statute for making false statements for the purpose of obtaining student financial aid); *Alexander v. United States*, 95 F.2d 873 (8th Cir. 1938), *cert. denied*, 305 U.S. 637 (defendants' mail fraud conviction for use of mails to issue fictitious and fraudulent medical and chiropractic diplomas affirmed).

78. In addition, persons found to have altered public or government documents might be subject to civil liability under a state's public records law. *But cf.*, *Florida v. Friedman*, 533 So. 2d 309 (Fla. Dist. Ct. App. 1988) (the submission of an altered transcript from a private institution does not violate the statute on public records).

79. *People v. East-West Univ., Inc.*, 163 Ill. App. 3d 44, 516 N.E.2d 482 (1987) (defendants indicted for forgery for falsifying enrollment and registration data in order to obtain financial aid funds); *State v. Taylor*, 92 N.C. App. 577, 385 S.E.2d 144; *People v. Miller*, 120 Misc. 2d 30, 465 N.Y.S.2d 120 (1983) (defendant charged with perjury and false representation of a college degree); *State v. Trout*, 199 Neb. 236, 257 N.W.2d 703 (1977) (defendant had prior conviction for obtaining money under false pretenses in connection with the use of a forged transcript); *People v. Sanchez*, 33 Cal. App. 3d 413, 109 Cal. Rptr. 56 (1973) (defendant convicted under provision of the Education Code for the delivery of a fraudulent diploma to another); *People v. Kirk*, 62 Misc. 2d 1078, 310 N.Y.S.2d 155 (1969) (defendant prosecuted for grand larceny by false pretenses for falsely representing his academic credentials); *People v. Russel*, 214 Cal. App. 2d 445, 29 Cal. Rptr. 562 (1963) (defendant prosecuted for forgery and false impersonation); *State v. Broadwell*, 104 Ohio App. 37, 136 N.E.2d 72 (1956) (defendant prosecuted under a statute which makes it an offense to offer to sell a false medical diploma).

for the use of fraudulent credentials. It is difficult to place a dollar figure on the value of academic credentials. It is just as difficult to describe, in monetary terms, the loss an educational institution suffers when its credentials are forged, altered or fraudulently used. There is not an easily identifiable victim of this crime. In a prosecution for the use of altered credentials, is the victim the true owner of the credentials (who often knows nothing about their fraudulent use)? Who is harmed by the use of brokered credentials?

The penalties associated with mail fraud and forgery of this nature are often insufficient to deter the criminal activity.<sup>80</sup> Thus, a prosecution which could require a substantial effort may yield little result.

Some college and university registrars, who have expressed frustration about the lack of federal and state law enforcement efforts and the inadequacy of penalties for the use of fraudulent academic credentials, have called for federal legislation with clear definitions and for penalties specifically prohibiting the use of falsified records.<sup>81</sup> However, it appears that with the exception of attempts to close down diploma mills, there has been little effort at the federal level to find solutions to this problem.<sup>82</sup>

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80. See generally 1985 JOINT REPORT, *supra* note 11.

81. 1985 JOINT REPORT, *supra* note 11, at 44-46. For example, one registrar's office noted the lack of laws regarding fraudulent credentials and further complained that "... even if there were laws against this kind of thing, the U.S. Attorneys aren't interested in prosecuting. There are no real penalties except admonishment . . . , maybe probation . . . ." 1985 JOINT REPORT, *supra* note 11, at 44-46.

Another registrar said:

The worst penalty likely to be imposed in the event that a fraud is discovered is that the person loses the job for which the academic credential was a requirement. Since the end result is the same as if the person had not claimed a fraudulent credential, the penalty has no deterrent value.

1985 JOINT REPORT, *supra* note 11, at 44-46.

82. There appears to be some effort by the Department of Education to take steps which will force educational institutions to take a more aggressive role in detecting fraud in the financial aid area. See 52 Fed. Reg. 45,712 (to be codified at 34 C.F.R. §§ 668, 690).

In his statement to the subcommittee investigating fraudulent credentials, Jack E. Swagerty, Assistant Chief Postal Inspector, U.S. Postal Inspection Service explained his agency's investigative efforts as follows:

Inspection Service investigative efforts in the area of fraudulent medical credentials are largely directed towards pursuing individuals and/or organizations who are brokers for these types of documents.

By contrast, there has been some movement at the state level to enact specific state statutes which regulate the use of academic credentials and prohibit the use of fraudulent academic credentials. This movement is significant in several respects. These statutes provide legislative recognition of the problem and the serious consequences of the use of fraudulent academic credentials. They eliminate the need to prove harm or economic loss. Moreover, these statutes assume (correctly) that the victim of the use of fraudulent academic credentials is society.

To date, just twelve states have enacted specific statutes of general application which regulate the use of academic credentials.<sup>83</sup> Most of these statutes were enacted or sub-

Investigations of the purchasers of fraudulent medical credentials are undertaken only when all of the following circumstances are present:

A. There is no adequate local remedy available where the case is being investigated/prosecuted.

B. The case involves a violation of the Mail Fraud Statute.

C. The local U.S. Attorney's office believes Inspection Service investigation and subsequent federal prosecution are appropriate.

Absent the presence of all of the above factors, any information gathered on purchasers of fraudulent medical credentials is forwarded to the appropriate state/local investigative agency for attention.

1985 JOINT REPORT, *supra* note 11, at 96.

The Federal Bureau of Investigation engages in similar efforts in its investigations of fraudulent medical credentials. 1985 JOINT REPORT, *supra* note 11, at 104.

83. CAL. EDUC. CODE §§ 32380-32385 (Deering 1989); FLA. STAT. ANN. § 817.566 (West 1989); MD. EDUC. CODE § 26-301 (1989); MASS. GEN. LAWS ANN. ch. 266, §89 (1980); N.J. STAT. ANN. § 18A:3-15.2 (1989); N.Y. EDUC. LAW §§ 224, 225 (McKinney 1988); N.C. GEN. STAT. § 14-122.1, § 118.2 (1986); OR. REV. STAT. § 348.885 (1987); R.I. GEN. LAWS § 11-18-27 (1981) & R.I. GEN. LAWS § 11-58-1 (1988 Supp.); S.C. CODE ANN. § 16-13-10 (Law. Co-op. 1985); TEX. EDUC. CODE ANN. § 4.29 (Vernon 1972); VA. CODE ANN. § 18.2-172.1 (1988).

An Ohio statute on falsification includes making false written statements to "induce another to extend credit to or . . . to confer any degree, diploma, certificate of attainment . . ." OHIO REV. CODE ANN. §2921.13(A)(8) (p. 1987).

Some states have statutes specifically aimed at the activities of diploma mills. *See, e.g.*, FLA. STAT. ANN. § 817.06 (West 1989); ILL. ANN. STAT. ch. 144 para. 231 (Smith-Hurd 1986); IOWA CODE ANN. § 504.12 (West 1988); LA. REV. STAT. ANN. § 51.224 (1987); ME. REV. STAT. ANN. tit. 17A 705 (1983); and NEV. REV. STAT. ANN. § 394.630 (Michie 1985).

A much larger number of states have statutory provisions governing the use of fraudulent credentials in specific professions. For example several have statutory provisions which prohibit the use of fraudulent academic credentials by dentists. *See, e.g.*, ALA. CODE § 34-9-22 (1985); ARIZ. REV. STAT. ANN. § 32-1297.09 (1986); ARK. STAT. ANN. § 21-12-102 (1987); CONN. GEN. STAT. ANN. §20-124 (1969); DEL. CODE ANN. tit. 24 §§ 1172, 1177 (1987); MASS. GEN. LAWS ANN. ch. 112 § 52 (1985); NEV. REV. STAT. ANN. § 631.395 (Michie 1985); CAL. BUS. & PROF. CODE

stantially amended within the last ten years; however, four states have had their statutes on the books for over ten years.<sup>84</sup>

Ten of these twelve states have criminal statutes that provide penalties ranging from up to ten years' imprisonment<sup>85</sup> to fines of not more than \$1000.<sup>86</sup> In several states,<sup>87</sup> persons charged with the use of fraudulent academic credentials can be convicted of a felony; in the other states, the offense is classified as a misdemeanor. The New Jersey statute imposes a civil penalty of \$1000 for the violation of its provisions.<sup>88</sup> The Oregon statute does not specify the penalty that applies to persons who have misrepresented that they possess an academic degree.<sup>89</sup>

The California statute is unique in that in addition to prohibiting the use of fraudulent academic credentials, it also provides for the issuance of an injunction<sup>90</sup> "in the name of the people of the State of California . . . or in the name of any authorized public or private school, college, university, or other authorized institution of learning, acting on its own

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§ 1701 (Deering 1986); ME. REV. STAT. ANN. tit. 32, § 1093 (1988); N.J. STAT. ANN. § 45:6-23 (West 1978); N.J. STAT. ANN. § 45:6-60 (West 1989 Cum. Supp.).

Other states have statutory provisions which prohibit the use of fraudulent academic credentials by physicians and surgeons. IDAHO CODE § 54-1814 (1988); IOWA CODE ANN. § 147.84 (West 1989); KY. REV. STAT. ANN. § 311.595 (Michie/Bobbs-Merrill 1983); S.D. CODIFIED LAWS ANN. § 36-4-15 (1986).

There are similar provisions relating to veterinarians, MASS. GEN. LAWS ANN. ch. 112, § 59 (West 1985); chiropractors, W. VA. CODE § 30-16-13 (1986); opticians, CONN. GEN. STAT. ANN. 20 § 154 (West 1989); podiatrists, N.M. STAT. ANN. § 61-8-12 (1986); and teachers, CAL. EDUC. CODE § 44360 (Deering 1989).

84. Nevada since 1911; Texas since 1971; New York since 1947 and Massachusetts since 1893.

85. N.C. GEN. STAT. § 14-122.1 (1986).

86. MD. EDUC. CODE ANN. § 26-301 (1989).

87. See, e.g., R.I. GEN. LAWS § 11-58-1 (Supp. 1988) which provides that it is a felony to sell or offer to obtain a brokered credential. By contrast, it is a misdemeanor to falsify or forge or use other fraudulent academic credentials. R.I. GEN. LAWS § 11-58-1 (1988 Supp.).

A violation of N.C. GEN. STAT. § 14-122.1 (1986) is a Class H felony if the offense is done with "deceit and intent to defraud." See N.C. GEN. STAT. § 14-3 (1986).

Certain violations of N.Y. EDUC. CODE § 224 (McKinney 1988) are classified as felonies.

88. N.J. STAT. ANN. § 18A:3-15.5 (1989).

89. OR. REV. STAT. § 348.885 (1987).

90. CAL. EDUC. CODE § 32384 (Deering 1989) provides that: "Any court of competent jurisdiction is hereby authorized to grant such relief as is necessary to enforce the provisions of this article, including the issuance of an injunction."

behalf or the general public"<sup>91</sup> where necessary to enforce its provisions.

Most of these statutes prohibit the use of brokered credentials as well as the use or attempted use of altered or forged legitimate academic credentials.<sup>92</sup> Seven of the statutes cover intentional acts<sup>93</sup> and two statutes apply only to material alterations of academic credentials.<sup>94</sup>

The conduct prohibited by these statutes generally includes: the sale or procurement of brokered credentials;<sup>95</sup> the forgery, counterfeiting or alteration of certain specified credentials;<sup>96</sup> the use of altered, forged or brokered creden-

91. In its entirety section 32385 provides that:

Actions for injunction under the provisions of this article may be brought in the name of the people of the State of California upon their own complaint or upon the complaint of any person, or in the name of any authorized public or private school, college, university, or other authorized institution of learning, acting on its own behalf or the general public.

CAL. EDUC. CODE § 32385 (Deering 1989).

92. The statute in South Carolina appears to apply only to the falsification or alteration of a transcript or diploma or the fraudulent use of a false or altered transcript and not to the use of brokered credentials. S.C. CODE ANN. § 16-13-15 (Law. Co-op. 1985). Virginia's statute is similarly limited. VA. CODE ANN. § 18.2-172.1 (1988). The Massachusetts' statute prohibits persons from "falsely pretend[ing] to hold [a] degree." MASS. GEN. LAWS ANN. ch. 266, § 89 (West 1980).

93. TEX. EDUC. CODE ANN. § 4.29 (Vernon 1972); N.J. STAT. ANN. § 18A:3-15.2 (West 1989); CAL. EDUC. CODE § 32380 (Deering 1988); N.Y. EDUC. LAW § 225 (McKinney 1988); MASS. GEN. LAWS ANN. ch. 266, § 89 (West 1980); FLA. STAT. ANN. § 817.566 (West 1989); N.C. GEN. STAT. § 14-122.1 (1988). The Rhode Island and Maryland statutes provide that a person shall not "willing aid or assist in falsely making, forging, or counterfeiting a transcript, diploma, or grade report . . ." R.I. GEN. LAW § 11-58-2(1) (1988); MD. EDUC. CODE ANN. § 26-301(a)(1) (1989).

94. N.Y. EDUC. LAW § 224(4) (McKinney 1988); VA. CODE ANN. § 18.2-172.1 (1988).

95. See, e.g., N.C. GEN. STAT. § 14-122.1(2) (1986); N.Y. EDUC. LAW § 224(2) (McKinney 1988) which provides that:

No person shall buy, sell or fraudulently or illegally make or alter, give, issue or obtain or attempt to obtain by fraudulent means any diploma, certificate or other instrument purporting to confer any literary, scientific, professional or other degree, or to constitute any license, or a duplicate thereof, or any certificate of registration, or to certify to the completion in whole or in part of any course of study in any university, college, academy or other educational institution.

96. R.I. GEN. LAWS § 11-58-2 (Supp. 1988). See also N.Y. EDUC. LAW § 225(9-a) (McKinney 1988) which provides that it shall be unlawful to:

[k]nowingly and willfully make an unauthorized and false alteration or representation of any grade, credit, honor, award or standing in the permanent record or transcript of any student with respect to a



tials;<sup>97</sup> or the attempt to engage in the specified prohibited conduct.<sup>98</sup>

The type of credentials covered by these statutes also varies from state to state. Most of the statutes expressly cover diplomas and transcripts. Other statutes are more specific. For example, the Texas statute defines the types of documents it covers fairly broadly to include "... a diploma, certificate, academic record, certificate of enrollment, or other instrument which purports to signify merit or achievement conferred by an institution of education in this state . . . ."<sup>99</sup> The Florida statute covers the false making, altering, simulating or forging of "... a document, degree, certificate, diploma, award, record, letter, transcript, form, or other paper . . . ."<sup>100</sup>

Only the North Carolina statute expressly prohibits the submission of false information on applications for employment, admission to an educational program, awards or for the "purpose of inducing another to issue a diploma, certificate, license or transcript . . . ."<sup>101</sup>

Statutes like those discussed above may supply the momentum which is necessary to overcome the obstacles that have, in some instances, impeded an effective judicial response to the problem of fraudulent academic credentials. In addition, this kind of legislative recognition of both the existence and the seriousness of this problem can help reinforce institutional policies on fraudulent academic credentials.

It is vital that the momentum in this area be maintained. Those states without specific statutes regulating the use of academic credentials should move quickly to draft legislation.

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school or college under the supervision of the regents, the commissioner, or the university of the state of New York.

97. S.C. CODE ANN. § 16-13-15 (Law. Co-op. 1985).

98. N.J. STAT. ANN. § 18A:3-15.2 (1989).

99. TEX. EDUC. CODE ANN. § 4.29 (Vernon 1972). The Texas statute appears to be limited by its own terms to academic credentials issued by educational institutions in the state of Texas. Several other statutes are appear to be similarly limited. *See, e.g.* N.Y. EDUC. LAW § 224 (McKinney 1988); S.C. CODE § 16-13-15 (Law. Co-op. 1985); FLA. STAT. ANN. § 817.566 (West 1989).

100. FLA. STAT. ANN. § 817.566 (West 1989).

101. N.C. GEN. STAT. § 14-122.1 (1986). The New Jersey statute may be interpreted to cover the submission of false information. It provides, in part, that "[a] person shall not with intent to deceive, falsely represent himself as having received any such degree or credential." N.J. STAT. ANN. § 18A:3-15.2 (1989).

The educational community's experience in this area combined with the relevant judicial decisions and the existing statutes provide ample guidance for the task.

A comprehensive statute on academic credentials should have the following components: a specific, yet inclusive, definition of the prohibited conduct; an expansive definition of academic credentials; a provision for progressive penalties; and a provision authorizing the court to grant other appropriate relief. Each of these components is discussed in detail below.

#### A. *Definition of Prohibited Conduct*

The statute should prohibit in general terms the procurement and attempted procurement of fraudulent academic credentials; the forgery or counterfeiting or assistance in the forgery or counterfeiting of academic credentials; and the use, attempted use and conspiracy to use any fraudulent academic credential. More specifically, the statutory definition of prohibited conduct should include, but not be limited to

- the sale, barter, or offer to sell or barter fraudulent academic credentials;<sup>102</sup>
- the purchase, by sale or barter, or the attempt to purchase by sale or barter fraudulent academic credentials;<sup>103</sup>
- the material<sup>104</sup> and false making, altering, duplication, creation, counterfeiting, simulating or forging of academic credentials;
- the misrepresentation of one's association with, or academic standing or progress at an educational institution;<sup>105</sup>

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102. For example, section 32382 of the California Education Code provides that "no person shall: (a) Sell, barter, offer to sell or barter, or conspire to sell or barter, any diploma or degree as defined in this article." CAL. EDUC. CODE § 32382(a) (Deering 1989).

103. *Id.* § 32382 provides that "no person shall: (b) buy, obtain by barter, attempt to buy or obtain by barter, or conspire to obtain by barter or buy, any diploma or degree."

104. Only three of the eleven statutes require that the forgery or alteration be material. *See, e.g.*, VA. CODE ANN. § 18.2-172.1 (1988); CALIF. EDUC. CODE § 32383 (Deering 1988); N.Y. EDUC. LAW § 225 (McKinney 1988).

105. The North Carolina statute applies to "false written representations of fact [which indicate that one has] . . . received a degree or other certification signifying merit, achievement, or completion of an educational program . . ." N.C. GEN. STAT. § 14-122.1 (1986).

Florida's statute applies to a person who "with intent to defraud, misrepresent

and

— the submission of false representations of fact on applications for employment, admission to an educational program, awards, or for the purpose of inducing another to issue a diploma, degree, etc.<sup>106</sup>

This last provision is perhaps the most significant because it is so often neglected. Without the inclusion of this type of provision in the definition or description of prohibited conduct, it is difficult—if not impossible—to get at this kind of fraud. Too often the penalty for supplying false information on an application form is that the applicant does not get the job or is not admitted to the educational program. This penalty will likely be of little consequence to the unsuccessful applicant, who was probably not initially qualified for the position.

#### V. DEFINITION OF ACADEMIC CREDENTIALS

The statute should define academic credentials as expansively as possible to include diplomas, degrees, certificates, licenses, grade reports, and certificates of enrollment. Consideration should also be given to the inclusion of a "catch all"

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sents his association with, or academic standing or other progress at, a state institution of higher education or community college by falsely making, altering, simulating, or forging . . . " an academic credential. FLA. STAT. ANN. §817.566 (West 1989). The Florida statute appears to be limited to misrepresentations related to state educational institutions.

See also MASS. GEN. L. ch. 266, § 89 (1980) which applies to one who "knowingly and falsely pretends to . . . be a graduate or to hold any degree, of a college or other educational institution of this commonwealth or elsewhere . . . ."

106. See N.C. GEN. STAT. § 14-122.1. (1986) which provides:

(a) it shall be unlawful for any person knowingly and willfully:

. . . .  
(4) [t]o make a false written representation of fact that he has received a degree or other certification signifying merit, achievement, or completion of an educational program involving study, experience, or testing from a secondary school, a postsecondary educational institution or governmental agency in an application for:

(a) [e]mployment;

(b) [a]dmission to an educational program;

(c) [a]ward; or

(d) [f]or the purpose of inducing another to issue a diploma, certificate, license, or transcript signifying merit or achievement in an educational program of a secondary school, postsecondary educational institution, or a governmental agency.

phrase such as "or other instrument purporting to confer any literary, scientific, professional, technical, or other degree in any course of study in any university, college, academy or other educational institution."<sup>107</sup> Care should be taken to ensure that the definition of academic credentials is not underinclusive. For example, some statutes appear to apply only to the alteration or forgery of credentials from state-supported institutions or from institutions within that state.<sup>108</sup> To be most effective, the statute should not restrict the definition of an academic credential to those which are issued by specific institutions. The Rhode Island statute has no such geographical restrictions on the origin of the aca-

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107. This language appears in the North Carolina statute, N.C. GEN. STAT. §14-118.2 (1986) and in N.Y. EDUC. LAW § 224(2) (McKinney 1988).

108. Several of the existing statutes seem to have a fairly restrictive definition of academic credentials. For example, the South Carolina statute says:

It shall be unlawful for any person to falsify or alter a transcript or diploma *from any college or university of this State or a state-supported technical college*. It shall also be unlawful for any person to use in this State a falsified or altered transcript or diploma from any college, university or technical school with the intent to defraud or mislead another person.

S.C. CODE ANN. §16-13-15 (Law. Co-op. 1985) (emphasis added). Thus, it appears that under South Carolina law, it would not be a crime to forge and sell to another a transcript from a school in Texas. Moreover, it is not clear from the language of this statute whether "any college or university of this State" means a state supported college or university or whether it means any college or university located in the state.

The New York statute has a similar limitation. Under this statute it is a misdemeanor to:

Knowingly and willfully make an unauthorized and false alteration or representation of any grade, credit, honor, award or standing in the permanent record or transcript of any student *with respect to a school or college under the supervision of the regents, the commissioner, or the university of the state of New York*.

N.Y. EDUC. LAW § 225(9-a) (emphasis supplied) (McKinney 1988).

The Florida statute refers to the misrepresentation of one's association with, academic standing or progress at "a state institution of higher education or community college . . ." FLA. STAT. ANN. § 817.566 (West 1989).

Finally, the Texas statute says that:

No person may buy, sell, create, duplicate, alter, give, or obtain, or attempt to buy, sell, create, duplicate, alter, give or obtain a diploma, certificate, academic record, certificate of enrollment, or other instrument which purports to signify merit or achievement *conferred by an institution of education in this state* with the intent to use fraudulently that document or to allow the fraudulent use of the document.

TEX. EDUC. CODE ANN. § 4.29 (Vernon 1972) (emphasis added). It would not be a violation of the Texas statute to alter a diploma issued by an Missouri institution with the intent to use it fraudulently.

demic credential. It prohibits the sale of a " . . . diploma or certificate of learning from *any* college, university or institution of learning in *any* country . . . ." <sup>109</sup>

Although most of the statutes do so, there is little reason to restrict the definition of academic credentials to those credentials which are issued by post-secondary institutions. Credentials from secondary institutions and other institutions of learning are also subject to alteration, forgery and falsification and should, therefore, be covered by the statute.

#### A. *Progressive Penalties*

The statute should expressly provide for progressive penalties for repeat offenders. The New York statute provides a separate penalty for a second offense of unauthorized and false alteration of academic credentials.<sup>110</sup> The express provision of progressive penalties could have a deterrent effect on those persons who would view the use of fraudulent academic credentials as a calculated risk.

#### B. *Other Relief*

Consideration should be given to the inclusion of a provision that would grant the right to seek relief to other parties affected by the use of fraudulent credentials. Other parties affected by the fraud may include the institution which has had one of its legitimate credentials altered; an institution whose name and "seal" appears on a brokered credential; an employer who has hired employees on the basis of degrees issued by a specific diploma mill; an educational institution that admitted a student based on his or her fraudulent credentials; or the State, which seeks to protect the rights of its citizens to be free from this form of fraud.

Courts of competent jurisdiction are specifically autho-

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109. R.I. GEN. LAWS § 11-18-27 (1981) (emphasis added).

110. N.Y. EDUC. LAW § 225(10) (McKinney 1988) establishes that a first misdemeanor offense is subject to

[A] fine of not less than fifty dollars or imprisonment for not less than thirty days, or by both such fine and imprisonment, and for a second offense by a fine of not less than two hundred and fifty dollars or imprisonment for not less than six months or by both such fine and imprisonment.

rized under the California statute on fraudulent academic credentials to "grant such relief as is necessary to enforce the provisions of this article, including the issuance of an injunction."<sup>111</sup> The California statute further provides that

[A]ctions for an injunction may be brought in the name of the people of the State of California upon their own complaint or upon the complaint of any person, or in the name of any authorized public or private school, college, university, or other authorized institution of learning, acting on its own behalf or the general public."<sup>112</sup>

This type of provision would enhance the authority of the court to fashion an appropriate and effective remedy. Finally, through its authority to issue injunctions, the court could attempt to deter future violations of the statute.

## VI. CONCLUSION

This article has proposed a simple two step approach to the problem of fraudulent academic credentials. The first step requires colleges and universities to review their own internal procedures and policies to determine whether they are effective in detecting, deterring, and punishing this fraudulent activity, in light of the legal issues involved in this area.

The second step involves a redirection of some earlier efforts at the federal level toward the more promising arena provided by the state legislatures. Recommendations for specific action in this area have been made in light of the relatively light judicial response to the problem of fraudulent academic credentials. The plot has been revealed; the characters have been developed; and while there is room for improvisation, the script is complete: the stage is set for action.

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111. CAL. EDUC. CODE § 32384 (Deering 1989).

112. *Id.* at § 32385.

